IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

RSA.No. 190 of 2007()

AS.46/2005 of PRINCIPAL SUB COURT,KOCHI
OS.264/2002 of ADDL.MUNSIFF COURT,KOCHI

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APPELLANT/ APPELLANT/PLAINTIFF

N.RAMASWAMY, AGED YEARS,
S/O.NARAYANAN, RESIDING AT HOUSE NO.C.C.X/1087,
DOBBY STREET, FORT KOCHI VILLAGE, COCHIN TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.JIMMY GEORGE (VATTATHARA)

RESPONDENT/RESPONDENTS/DEFENDANT

V.DEVADAS, S/O.LATE VELAYUDHAN,
AGED ABOUT 48 YEARS, RESIDING AT HOUSE NO.
CC.X/1088, DOBBY STREET, FORT KOCHI VILLAGE,
COCHIN TALUK.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 06/03/2007, ALONG WITH RSA NO. 227 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.403/07 IN RSA 190/07

DISMISSED

6/3/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A .NOs. 190 & 227 OF 2007

Dated 6th March 2007

J U D G M E N T

Plaintiff in O.S.521/02 and 264/02 on the file of Additional Munsiff is the appellant. Respondent is the defendant in the suit. Both suits were jointly tried by learned Munsiff. O.S.521/02 was filed for fixation of boundary and O.S.264/02 was filed for permanent prohibitory injunction. Property of plaintiff is situated on the western side of immediate east of property of the defendant. Plaintiff claimed title and possession under Ext.A1 sale deed executed through the court. Defendant claimed right under Ext.B1 sale deed No.8953/1973. Dispute between the parties is the exact eastern boundary of property of appellant which should be the western boundary of property of defendants. Plaint schedule property is the property covered under Ext.A1. Property cannot be fixed with reference to Ext.A1 as it does not show the boundaries. Ext.A1 shows that property assigned thereunder is the

property covered under Ext.B3 registered sale deed 1765/1973. Therefore to fix the property one has necessarily to refer to Ext.B3. A commission was appointed by learned Munsiff and Commissioner submitted Ext.C1 report and Exts.C1(a) plan and C1(b) sketch. Plaintiff filed an application to set aside the report and plan submitted by commissioner. After elaborate enquiry learned Munsiff dismissed the application. Learned Munsiff after recording the evidence considered the correctness of Ext.C1(a) plan once again and found that properties have been properly demarcated in Ext.C1 report and Ext.C1(a) plan. Plot marked as C in Exts.C1(a) and C1(b) is having an extent of 81 square meters. According to plaintiff it should form part of the property of defendant when defendant contends that it is not within the property covered under Ext.B1 which is in possession of strangers. Learned Munsiff on the evidence of PW1 the plaintiff himself, found that plot C does not come within Ext.B1. Evidence of PW1 himself has been extracted by learned Munsiff to support the said findings. On the basis of evidence learned Munsiff found that property has been correctly demarcated. Learned Munsiff fixed eastern boundary of the plaint schedule property as shown in Ext.C1 plan. Appellant challenged

the decree and judgment before Sub court, Kochi in A.S.45/06 and A.S.46/05. Learned Sub Judge as per common judgment after re-appreciation of evidence confirmed the decree and judgment passed by learned Munsiff and dismissed both appeals. R.S.A.190/07 is filed challenging the judgment in A.S.46/05 and R.S.A.227/07 challenging judgment in A.S.45/05.

2. Learned counsel appearing for appellant was heard.

3. Argument of learned counsel appearing for appellant was that courts below did not properly consider the objections raised by appellant against correctness of Ext.C1 report and Exts.C1(a) plan and C1(b) sketch. Arguments were that commissioner identified the property with the assistance of Village Assistant who is not competent as provided under Kerala Survey and Boundaries Act and therefore courts below should not have relied on the identification made by commissioner to fix boundaries.

4. On hearing learned counsel appearing for appellant and going though judgments of courts below, I do not find any substantial question of law involved in the appeal. Question is only on factual finding about boundaries and proper identification of the property.

Even though properties were not identified by the Commissioner with the assistance of Taluk Surveyor, evidence establish that property has been correctly identified. The correctness of the identification was proved by the evidence of appellant himself. In any event, that finding of fact cannot be interfered in exercise of the powers under Section 100 of Code of Civil Procedure.

Regular Second Appeals are dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.